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CHARLES ELMORE

(31)
Supreme Court of the United States

OCTOBER TERM 1944

No. 360

UNITED FRUIT COMPANY,

Petitioner,

against

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE,
CRÉSCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER
and FRANCISCO MARTINEZ,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT AND BRIEF IN SUPPORT THEREOF**

CHAUNCEY I. CLARK,

NORMAN M. BARRON,

Counsel for Petitioner.

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**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, United Fruit Company, a New Jersey corporation (Respondent in No. 103 October Term, 1944), prays for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review its order, judgment and decree entered May 23, 1944 (R. p. 39), affirming a decree of the United States District Court

for the Southern District of New York entered June 21, 1943, awarding each of the respondents one month's wages under Sec. 594 Tit. 46 U. S. C. (R. p. 23).

Respondents, as petitioners, have applied for a writ of certiorari, which petitioner opposes (No. 103 October Term, 1944) on the ground that the Courts below erroneously denied them subsistence in addition to said one month's wages, and petitioner seeks the present writ on the ground that the Courts below erroneously allowed respondents any recovery under Sec. 594.

The certified transcript of the record, including the proceedings in said Circuit Court of Appeals, has been furnished by respondents in connection with their petition aforesaid in accordance with Rule 38, para. 1, of the Rules of this Court.

Summary Statement

The suit is for damages for alleged wrongful discharge of respondents under Title 46, U. S. C., Sec. 594 (R. p. 4), which provides:

"Right to wages in case of improper discharge. Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned" (R. S. 4527).

Petitioner's contention was that any and all liability to respondents on account of wages, under the statute or otherwise, terminated when the *Quirigua* was requisitioned by the United States Maritime Commission for delivery to the United States Navy prior to commencement of the contract voyage.

The District Court held that since the respondents were discharged "without fault on their part" and "without their consent" the liquidated damages provided by Sec. 594 should be imposed against the petitioner-shipowner notwithstanding that its discharge of the crew was admittedly due to government requisition, a cause beyond the shipowner's control which rendered performance impossible (R. pp. 12, 18-21). Although the District Court recognized that the statute provided for recovery by seamen "having been improperly discharged", i.e., for breach of contract of employment (R. p. 20), the Court regarded as irrelevant and unavailing petitioner's defense of impossibility or frustration.

The Circuit Court of Appeals by-passed the District Court's ruling and decided the appeal on the ground that petitioner either assumed the risk of the requisition or failed to prove that the requisition was "an excuse for the breach", i.e., for the crew's discharge (R. p. 38).

Questions Presented

I. Construction of Section 594.

Whether this statute authorizing recovery of stipulated damages in the event that seamen are "improperly discharged" may be construed to impose liability in the absence of fault on the shipowner's part and under circum-

stances excusing further performance of the contract on both sides, even though such construction would appear to be in conflict with the language of the statute and contrary to established law governing maritime contracts.

2. Risk of requisition.

Whether the risk of requisition can properly be cast on the petitioner where the parties have agreed that respondents' discharge was caused solely by the requisition, and such requisition is generally recognized as an adequate defense excusing a shipowner from further performance and from liability for breach of contract.

Reasons Relied On for Allowance of the Writ

1. In holding that liability may be imposed on the petitioning shipowner for extra wages under Sec. 594 as compensation for breach of its employment contract with the crew-respondents, notwithstanding the petitioner's valid defense that the requisition of the vessel was a supervening act excusing respondents' discharge and rendering further performance of the contract impossible, the District Court has erroneously construed this important statute affecting the mutual rights of seamen and their employers in a manner contrary to the decision of this Court in *The Steel Trader*, 275 U. S. 388. And, since the Circuit Court of Appeals rested its affirmance on other erroneous grounds, without considering the basic question of statutory construction which the District Court decided erroneously, the District Court's decision which introduces confusion and uncertainty in the matter of application of Sec. 594 to

seamen's cases, will not be reviewed and corrected unless the petition is granted.

2. In holding that the petitioner assumed the risk of the vessel's requisition, or that the requisition was not the excusing cause of respondents' discharge, the Circuit Court of Appeals has decided an important question of admiralty law contrary to the relevant decisions of this Court, as well as of the Circuit Court of Appeals, Second Circuit and Fourth Circuit, and of the highest courts in other important jurisdictions.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit sitting at New York, New York, requiring said Court to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this suit, to the end that this suit may be reviewed and determined by this Court; and the order, judgment and decree of the Circuit Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may seem proper.

UNITED FRUIT COMPANY,
By CHAUNCEY I. CLARK,
Counsel.

New York, N. Y.,
August 16, 1944.